

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

SENECA FOODS CORPORATION

Employer

and

Case 9-RC-17312
(Formerly 30-RC-6150)

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding ^{1/}, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer timely filed a brief which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the manufacture of cans at Baraboo, Wisconsin, where it currently employs approximately 150 to 160 employees in the unit found appropriate. There is no history of collective-bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all full-time and regular part-time production and maintenance employees, excluding all managerial employees, secretaries, office clerical employees, sales persons and all guards and supervisors as defined in the Act. Although it agrees that a production and maintenance unit is generally appropriate for purposes of collective bargaining, the Employer, contrary to the Petitioner, asserts that 24 of the 28 employees whom the Employer refers to as group leaders must be excluded from the unit as supervisors within the meaning of Section 2(11) of the Act. The Petitioner maintains that none of the group leaders possess or exercise any supervisory indicia as set forth in Section 2(11) of the Act and that the group leaders should, therefore, be included in the unit.

In addition to the facility involved in this proceeding, the Employer operates several food cannery plants throughout the United States. Approximately 95 percent of the cans that are manufactured at the Baraboo facility are utilized in the Employer's food cannery operations. The Employer's can manufacturing operation takes place in a 112,000 square-foot facility, which also includes warehousing space. Adjacent to the manufacturing facility is a separate warehouse of 105,000 square feet. There are three production departments, the coil/oven department, the press department and the assembly department. The facility also includes a shipping department and a tool room. The manufacturing operation is a 7-day a week, 24-hour a day operation. Some of the Employer's production, maintenance and warehouse employees are divided into four crews that rotate on 12-hour shifts from 7 a.m. to 7 p.m. or from 7 p.m. to 7 a.m., while other employees work 1 of 3 8-hour shifts, from 7 a.m. to 3:30 p.m., 3:30 p.m. to midnight and midnight to 7 a.m. Effective November 1, 1999, the Employer plans to change all of its shifts to 12-hour shifts.

Plant Manager Terry Dersham is the highest ranking manager employed at the facility. Reporting to Dersham is Production Manager David Rake and five additional salaried supervisors: Production Supervisor Dick Shear, Assembly Supervisor Bob Weiland, Quality Control Supervisor Dawn Carignan, Press Supervisor John Labeots, and Machine Shop and Warehouse Supervisor Dennis Brenton. Shear, Weiland and Carignan normally work the day shift from about 6:30 a.m. to 3:30 p.m. Labeots normally works the second shift from about 3:15 p.m. until midnight and Brenton generally works the third shift from slightly before midnight to 8 a.m. One of the five salaried supervisors is responsible for covering the facility every fifth weekend. When a salaried supervisor has weekend duty, the supervisor must spend 8 hours in the facility and must be on call via a pager for the remainder of the weekend. Additionally, the record discloses that Carignan regularly receives telephone calls about issues that arise when she is not scheduled in the facility. The record does not disclose whether the other salaried supervisors are also in telephonic contact with the facility during their off-shift hours or the specific hours of work for Dersham and Rake.

There are approximately 24 regular production employees along with 6 group leaders employed in the assembly department. In the press department there are approximately 28

production employees and 4 group leaders. In the coil/oven department there are approximately 20 production employees along with 2 coil and 4 oven group leaders. The quality control group includes 16 inspectors, 16 general laborers, 8 palletizers and 4 group leaders. The Employer also employs four additional group leaders, three of whom are machinists and the fourth is an electrician. The Employer maintains that the three machinist group are leaders and the electrician group leader are not statutory supervisors because they do not have any employees reporting to them.

The Employer's manufacturing process begins with the receipt of 20,000 pound steel coils at its docks. The steel coils are then cut into sheets. The end stock, those sheets used to make the top and bottom ends of the cans, is treated with an ultraviolet coating that protects the ends from rust. In the next step of the process end and body stock are placed in a conventional oven and/or a coater where interior enamel is added. The end stock is then sent to the press department where the top and bottom can ends are stamped out of the sheets. Half of the stamped can ends are sent to assembly where they are assembled on four production lines with the can bodies that have previously received interior enamel coating. The remaining stamped ends are placed into storage on pallets to await shipment to canneries or placed directly onto trucks for shipment.

All hourly employees, including the group leaders, punch a time clock, receive the same benefits and are paid at either the higher tier 1 or at the lower tier 2 rate. All group leaders are paid at the tier 1 rate but receive a 50-cent an hour premium. Additionally, group leaders possess departmental superseniority in the event of a layoff. The Employer provides its hourly employees, including the group leaders, with different colored uniforms from salaried supervision. However, the Employer does not mandate that employees or supervision wear the uniforms and it appears that many do not. Group leaders report to work 15 minutes prior to the start of their shift for the purpose of discussing any production issues with their counterparts on the prior shift. Group leaders are paid at an overtime rate for this 15 minute period. Salaried supervisors differ from group leaders in that they may be eligible for vacation on an earlier service time-frame, they have their own parking spaces and mail boxes and have the use of a management bathroom. (The management bathroom is, however, only available to male salaried supervisors and guests.)

Rake prepares a weekly production schedule. The department supervisors then meet and create a weekly work schedule based on the production schedule. The group leaders do not attend these meetings or play any role in the scheduling of work. When employees report to work they typically review the schedule and perform the work designated by the schedule. If for some reason the schedule is unclear, an employee might consult with a group leader to obtain a clarification as to the work to be performed. Additionally, changes in the schedule are conveyed to employees by group leaders or department supervisors. In this regard, the record does not disclose how often the schedule is changed or whether such changes occur more frequently on one shift than on others.

The record reflects that, with the exception of quality control group leaders, the group leaders spend at least 80 percent of their work time performing technical, or hands on, work and possibly 20 percent of their time assisting employees in their respective departments in the

resolution of production issues. The record discloses that at least some of the time spent assisting other employees also involves the performance of hands on duties, such as troubleshooting production lines. The percentage of work time spent by quality control group leaders in the performance of hands on technical tasks versus the percentage of work time that they spend in the performance of lead functions is in dispute. Thus, Dersham testified that quality control group leaders spend 80 percent of their work time performing some type of leadership function and only 20 percent of their work time performing hands on technical tasks. However, other record evidence indicates that quality control group leaders may spend a significantly higher percentage of their work time in the performance of their technical duties. For example, a quality control group leader may spend more than a third of his or her shift performing their own quality control checks and audits on the Employer's machines and processes. Additionally, they may spend an unspecified percentage of their work time performing paperwork used for record keeping functions. Finally, group leaders' duties associated with their positions may also involve the performance of hands on work such as assisting other inspectors in performing their quality control and auditing functions and assisting in the resolution of production glitches.

The quality control group leaders each typically have lead responsibility for three or four general laborers. These general laborers receive their regular work assignments for the week on the weekly schedule in the same manner as other production employees. However, if there is a machine breakdown or an unexpected employee absence for any reason, a quality control group leader may move one or more general laborers into the vacant position to ensure adequate staffing to maintain production. The quality control group leaders move the general laborers into vacant positions based typically on their review of a checklist that indicates whether an employee is able to perform a certain type of work. A general laborer who is moved into a vacant position receives, if applicable, the higher rate of pay for that position. In assigning general laborers to fill in for absent employees, a quality control group leader may discuss the vacancy with the group leader in the department adversely affected by the absence. It appears that when a salaried supervisor is available the group leader will ask the supervisor about moving the general laborer into the vacant position.

On some occasions, when a general laborer is unavailable or lacking in qualifications to fill a particular position because of an absence, an employee may be telephoned by a salaried supervisor or a group leader to fill in for the absent employee. The record discloses that group leaders typically consult the shift schedule to determine an employee's availability for work and will attempt to have an employee report early if he or she is scheduled to work the next shift. However, an employee can refuse a call in without any adverse consequence. Employees who do accept a call in are eligible to receive overtime pay. The record does not disclose how often it is necessary to call in employees to fill in for absent employees rather than utilizing an already scheduled general laborer.

An employee who calls off sick or who needs to leave work during the course of a shift can inform a group leader of their absence or need to leave work. If there is no salaried supervisor immediately available to report the occurrence, the group leader will merely make a note of the call off or need to leave early and the reason therefore on a form provided by the Employer. The

group leader then posts the form or slip on a board in the front office where it is reviewed by a salaried supervisor.

Group leaders do not recommend that employees be disciplined. In the event a group leader observes an employee engaging in unsafe conduct or conduct perceived to violate the Employer's rules, the group leader will report such conduct to a department supervisor. However, the record discloses that any employee in the facility may turn in an employee engaging in misconduct or committing an unsafe act. Once employee misconduct or an unsafe act is reported to a department supervisor, regardless of whether the report is made by a group leader or other rank-and-file employee, the department supervisor determines whether to administer the appropriate progressive discipline pursuant to the Employer's progressive disciplinary procedure. Pursuant to this procedure, salaried department supervisors may issue employees verbal warnings, written warnings and 3-day suspensions. Only Dersham may discharge an employee.

With regard to training and evaluating employees, group leaders may train employees in their departments or areas in the performance of various tasks. However, employees are also often trained by other senior employees. Group leaders utilize some type of a checklist to indicate to department supervisors which tasks involved in a particular job that employees are competent to perform. If the department supervisor concurs he or she signs off on the checklist. These checklists are filled out by a group leader over a period of time as he or she observes an employee becoming proficient in the distinct tasks within a job assignment. The checklists do not contain recommendations for retention, dismissal, promotion to a different position or for additional monetary compensation.

ANALYSIS:

Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors and not "straw bosses, leadmen, set-up men and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Moreover, the exercise of "supervisory authority" in merely a routine, clerical, perfunctory or sporadic manner does not confer statutory supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB

1083, 1084 (1985); *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, 260 NLRB 486, 507 (1982). It is also well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). “Accordingly, whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Based on a careful review of the record and consideration of the Employer's brief, I find that the Employer here has not met its burden in establishing that Harrison is a supervisor within the meaning of Section 2(11) of the Act. To the contrary, the record evidence affirmatively discloses that group leaders do not possess any indicia of supervisory authority within the meaning of Section 2(11) of the Act. They do not have or possess the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline employees to direct their work or to adjust their grievances, in a manner requiring the exercise of independent judgment.

The Employer contends that the group leaders are statutory supervisors based on their limited ability to reassign or call-in employees to fill in for absent employees, their involvement in reporting rules and safety infractions and noting employee skill levels, and their role in recording employee absences or tardies, their failure to punch a timeclock, or their need to leave work early. Additionally, the Employer relies on secondary indicia of supervisory status such as ratio of supervisors to employees and the fact that group leaders may pass out employee paychecks. I disagree with the Employer's position vis-à-vis the supervisory status of its group leaders and I specifically discount the limited, circumscribed, and routine nature of the group leaders exercise of any of the authority set forth in Section 2(11) of the Act.

The record establishes, as noted above, that the authority of group leaders to reassign and call employees in to fill in for absent employees is routine, circumscribed and dictated by rather obvious production needs. Thus, general laborers are assigned to fill in for absent production employees based on their known ability to perform the work. If a general laborer is unavailable to fill a position, on some occasions a group leader will consult the schedule in order to determine those employees available to fill in and will call employees to assume the vacant slot until an employee agrees to perform the work. Moreover, the record discloses that the majority of the group leaders play a very small role in obtaining replacements for absent employees. Only the quality control group leaders are substantially involved in obtaining general laborers to fill vacancies. The record does not disclose how often it is necessary to call an employee in to work or whether such calls are exclusively made by department supervisors or quality control group leaders. With the exception of the fill-in assignments, I note that the record is devoid of even a suggestion that any of the group leaders play any kind of significant role in assigning daily work tasks to employees. Rather, employees merely follow the pre-established schedule in completing a quite routine manufacturing process.

With regard to the role of group leaders in reporting employee disciplinary infractions and safety violations, the record discloses that the group leaders do not make effective recommendations in connection with reporting such conduct. Indeed, in most instances they do

not make any type of recommendation and any rank-and-file employee may also report such conduct. In all instances, group leaders' reports of infractions are reviewed by salaried supervisors. In this connection, it is well established that the mere exercise of a reporting function which does not automatically lead to further discipline or adverse action against an employee and which is reviewed by a conceded supervisor does not establish supervisory authority. See, *Lincoln Park Nursing and Convalescent Center*, 318 NLRB 1160, 1162 (1995); *Lakeview Health Center*, 308 NLRB 75, 78-79 (1992).

With regard to the participation of group leaders in evaluating whether an employee possesses the skills to perform certain tasks related to their jobs, I note that these evaluations do not directly affect whether an employee will be retained, dismissed, receive a raise or be promoted. Indeed, the forms utilized to check off or note employees' skills do not contain any express recommendations. Moreover, I note that these check-off forms are subject to review by the department heads, who sign off on the forms with the group leaders to note their concurrence with the group leader's skill evaluation.^{2/} It is well settled that where a putative supervisor's participation in employee evaluations does not directly impact the employee's conditions of employment and where such evaluations are reviewed by admitted supervisory personnel, the completion of such forms does not confer supervisory status. *Hauser Hard-Chrome of Kentucky, Inc.*, 326 NLRB No. 36 (1998); *Hillhaven Rehabilitation Center*, 325 NLRB No. 9 (1998).

The role of group leaders in recording employee absences, tardies, mid-shift call offs, or the failure to punch a timeclock, is again merely a reportorial function and does not vest them with Section 2(11) supervisory status. Finally, I note that the secondary indicia relied on by the Employer is equivocal at best, particularly in regard to ratio, where a finding that group leaders are supervisors results in approximately 31 supervisors for approximately 130 production employees - a ratio of 1 supervisor for just over 4 unit employees. Given the routine nature of the work involved here, I am inclined to view this result, contrary to the Employer, as an unrealistic supervisory/employee ratio that militates against finding the group leaders to be supervisors. *Manor West, Inc.*, 313 NLRB 956 (1994); *First Western Building Services, Inc.*, 309 NLRB 591, 603 (1992); *Bay Area Los Angeles Express*, 275 NLRB 1063 (1985). In any event, absent any primary indicia of supervisory status as found here, such secondary indicia has no legal significance. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 fn. 2 (1993); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993); *McClatchy Newspapers*, 307 NLRB 773 (1992).

The three Board cases cited by the Employer in its brief in support of its proposition that the group leaders are statutory supervisors are clearly distinguishable from the subject case. In *Entergy Systems & Service Inc.*, 328 NLRB No. 125 (1999), the Board found an employer's installation crew leaders to be statutory supervisors. However, it did so on the "limited ground that . . . any one of them can effectively block an employee's promotion." In *Entergy Systems*, the crew leaders completed 30, 60, 90-day, and annual evaluations for employees and recommended employees for promotions. Additionally, promotions were only granted if all of the crew leaders concurred on the promotion. The Board concluded that because of their ability

^{2/} These evaluation forms regarding the skill level of employees in their position appear to be distinguishable from an evaluation of an employee's actual performance in a given job.

to affect the promotional opportunities of employees the crew leaders were statutory supervisors. In contrast, the group leaders here do not recommend employees for promotion and they certainly cannot block promotions. Rather, the group leaders in dispute merely report what they observe with respect to an employee's skill level and the contents of the report is then verified and signed off on by a department supervisor.

Similarly, in *Demi's Leather Corp.*, 321 NLRB 966, 974 (1996), relied on by the Employer, the leadman, unlike the group leader here, possessed unfettered supervisory authority. In *Demi's*, the "leadman" in question was in charge of a small leather drying facility. For example, the leadman in *Demi's*, using independent judgment, directed employees to perform various tasks within the facility on a daily basis. Additionally, at his discretion, he could send one or more of the employees working under him to perform tasks at another of the employer's plants. On some occasions, the leadman did so because he did not get along with an employee, not for reasons related to the employer's production needs. The leadman also could *require* employees to work overtime and could leave the facility himself and go home whenever he chose to do so. The group leaders in the subject case cannot require employees to work overtime, cannot send employees to other facilities for personal reasons, cannot leave the facility whenever they choose, and are not involved in the daily assignment of discrete tasks except for routinely filling in vacancies occasioned by employee absences. In sum, the leadman's duties in *Demi's* bears little resemblance to those possessed by the group leaders in the case *sub judice*.

Finally, in *Grinnel Corporation*, 320 NLRB 817, 821 (1996), cited by the Employer, an administrative law judge found that the employer's "foreman in charge" to be a statutory supervisor where he was in charge of coordinating the work at a particular jobsite, attended supervisory meetings and assigned employees to various tasks on a daily basis. Here, the group leaders simply do not exhibit this type of supervisory indicia. They do not assign work on a daily basis or attend management meetings.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that the group leaders are merely "leadmen" who do not exercise independent judgment in directing employees. In performing their duties, most of the group leaders spend approximately 80 percent of their work time engaged in hands on production related tasks and the Employer does not even maintain that four of the group leaders are supervisors. The group leaders limited role in assigning employees to fill in for absent employees and their various reportorial functions are commensurate with the status of leadmen rather than statutory supervisors. Accordingly, I find that the group leaders are not supervisors within the meaning of Section 2(11) of the Act. I shall, therefore, include them in the unit.

SUPERVISION:

In accord with the record evidence, I shall exclude Terry Dersham, plant manager; Dick Shear, production supervisor; Bob Weiland, assembly supervisor; Dawn Carignan, quality control supervisor; John Labeots, press supervisor and Dennis Brenton, machine shop and warehouse supervisor, from the unit as supervisors within the meaning of Section 2(11) of the Act.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Baraboo, Wisconsin facility, excluding all managerial employees, secretaries, office clerical employees, sales persons, and all guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Steelworkers of America, AFL-CIO-CLC**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 2, 1999**. No extension of time to file this list shall be

granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 9, 1999**.

Dated at Cincinnati, Ohio this 26th day of October 1999.

/s/ [Richard L. Ahearn]

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